

II. Remarks/Arguments

Claims 1–14 were previously pending. Claims 54-62 have been added. Reconsideration of presently pending claims 1–14 and 54-62 is respectfully requested in light of the above amendments and the following remarks.

The Examiner's indication of allowability for claim 14 is appreciated.

In the September 19, 2006 Advisory Action, the Examiner notes that the previous “request for reconsideration has been but does NOT place the application in condition for allowance because: ... The Examiner[’s] position regarding the rejection of claims 1-13 under 103 of Ross et al in view of Fraser et al is unchanged, the rejection is clearly stated and logical.” Therefore, Applicants address this rejection of claims 1-13 below.

Rejections Under 35 U.S.C. § 103

Claims 1–13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2003/0187506 A1 to Ross, et al. (“Ross”) in view of US Patent Publication No. 2004/0193271 A1 to Fraser, et al. (“Fraser”). Applicants traverse the rejection of claims 1–13 on the grounds that the Ross and Fraser references are defective in establishing a prima facie case of obviousness with respect to claims 1–13.

As the PTO recognizes in MPEP § 2142:

... The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness...

It is submitted that, in the present case, the Examiner has not factually supported a prima facie case of obviousness for at least the following reasons.

As amended, claim 1 requires, “at least one retention member having a first end and an engagement portion, **the first end attached to a portion of the end member**, the engagement portion moveable between a first position outside of the socket for allowing the portion of the prosthetic insertion device to slide within the socket and a second position at least partially within the socket to inhibit sliding of the portion of the prosthetic insertion device within the socket.” Clearly, the ends of the pin 44 of Ross are not attached to any portion of the end plate members 14, 16. Rather, the pin 44 is a separate piece that must be inserted after the central core member 12 has been engaged with the end plate members 14, 16. Thus, Ross does not teach “at least one retention member movably attached to a portion of the end

member” as required by claim 1. Fraser does not appear to teach a retention member, let alone one having an end attached to a portion of the end member. Thus, even when combined, the Ross and Fraser references do not teach the claimed subject matter. Therefore, for at least this reason, the Examiner’s burden of factually supporting a *prima facie* case of obviousness has clearly not been met with respect to independent claim 1, and the rejection under 35 U.S.C. § 103(a) should be withdrawn. Claims 2-13 depend from and further limit claim 1 and, therefore, the rejection of those claims should be withdrawn for at least the same reasons.

New Claims 54-62

New claims 54-62 have been added and Applicants respectfully assert that they also are patentable over Ross in view of Fraser. In particular, even when combined Ross and Fraser at least fail to teach:

“first and second end members, the first and second end members cooperating to slidably receive the prosthetic insert, wherein the first and second end members each comprise

* * *

a pair of flanges extending from the second surface, the flanges being angled towards one another to define a pair of elongated slots, the pair of elongated slots adapted to slidably receive a portion of the prosthetic insert; and

a pair of retaining members positioned adjacent the elongated slots and moveable between a first position for allowing the prosthetic insert to slide within the pair of elongated slots and a second position for limiting the motion of the prosthetic insert.”

Therefore, Applicants believe new claims 54-62 are in condition for allowance.

Conclusion

It is clear from the foregoing that all pending claims are in condition for allowance. An early notice of allowance of claims 1–14 and 54-62 is respectfully requested. Should the Examiner deem that any further amendment is necessary to place this application in condition for allowance, the Examiner is invited to contact the undersigned attorney at the below listed telephone number..

Respectfully submitted,

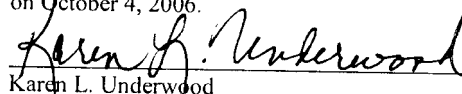


J. Andrew Lowes
Registration No. 40,706

Dated: 10/4/06
HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972-681-7557
IP Facsimile No. 214-200-0853
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Karen L. Underwood